

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 821 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 No

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MOHMEDHABIB ASHRAFMIYA EKKISWALA

Versus

NURUDDIN MOHMEDALI

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Appearance:

MR GIRISH D BHATT for Petitioner

MR MB GANDHI for Respondent No. 1

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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/07/1999

ORAL JUDGEMENT

1. Whether a strict standard of proof is required in civil cases or the matters to be decided on preponderance of probabilities? The question arose as under in a very narrow compass.

2. A suit bearing Suit No. 2608 of 1984 came to be

filed by the present petitioner against the present respondents under Sec. 13(1)(k) of the Bombay Rent Act for the eviction. It was the say of the defendants that defendant No.1 is a proprietary concern and defendant

No.2 was the sole owner and proprietor defendant No.1 concern. The business premises, that is situated in Kalupur at Relief Road, near Kadiakuva bearing M.C. No. 3312/1/2 paiki, was let to the defendants for the business purpose and the rent was fixed at Rs.150/- per month. The suit came to be filed on 3rd August, 1984 alleging that the suit premises was not used for the purpose for which it was let for last seven years. Defendants appeared in the suit and filed their written statement. The parties have also adduced evidence. Defendants admitted that, in fact, for the relevant period, the suit premises were closed and were not used for the continuous period of six months immediately preceding the filing of the suit. But, according to the plea of the defendant, he had reasonable cause for not using the suit premises. Sec. 13(1)(k) reads as under :

" that the premises have not been used without reasonable cause for the purpose for which they were let, and for a continuous period of six months immediately preceding the date of the suit".

While, it is admitted by the defendant that the premises let were not used immediately preceding six months of the filing of the suit, at the same time, he has pleaded that he had reasonable cause for not using the premises. The cause was the sickness or illness of the defendant, for which he tendered evidence because he was required to

show the reasonable cause, but, the trial court did not believe this evidence and passed decree of eviction under Sec. 13(1)(k).

3. Being aggrieved, the defendant filed an Appeal before the Appellate Bench of the Small Causes Court at Ahmedabad, being Civil Appeal No. 108 of 1992, wherein the learned Appellate Bench of the Small Causes Court appreciated the evidence mainly of the two Doctors, namely, Dr. Desmukh and Dr. Baramatiwala and came to the conclusion that the appellant - defendant had reasonable cause for not using the premises and decree of eviction passed by the trial court was reversed.

4. It was the case of the defendant that he was admitted in the hospital of Dr. Deshmukh and he was operated on 13th June, 1983 and was discharged from hospital on 22nd August, 1983. He was advised to take rest for three to four months thereafter. Dr. Deshmukh has been examined by the defendant. Thereafter, another witness Dr. Baramatiwala has also been examined and the case of the defendant was that he was suffering from Hepatitis with Cholelithiasis. Dr. Baramatiwala issued Certificate (Exh. 58) dated 25th June, 1984 and Dr. Baramatiwala has also stated that from 12th January, 1984 to 20th June, 1984 the defendant was under his treatment. Other documents - prescription, etc. have also been produced at Exhs. 59, 61 and 62. The dates are 2nd February, 1984, 24th January, 1984, 12th January, 1984. While against the evidence of these two Doctors, the

learned Appellate Bench said that the objections against the evidence of these two Doctors cannot be sustained merely because since Dr. Deshmukh has not produced any documentary evidence or case papers to show that he had treated and operated the defendant No. 2, therefore, the certificate issued by this Doctor could not be believed and that Dr. Baramatiwala could not be believed because he did not treat the defendant for Cholelithiasis. The main objection which was raised against the evidence of Dr. Baramatiwala was that he admitted in the deposition that the defendant was not treated by him for Cholelithiasis and, therefore, it could not be believed that the defendant might have been treated for Hepatitis also. The Appellate Bench has also noted that there may be some infirmities of the evidence of Dr. Baramatiwala but that would not amount that he has created false papers which would lead to the conclusion that the defendant did not take any treatment from Dr. Baramatiwala from 12th January, 1984 to 30th February, 1984. This should be either 28th February, 1984 or 29th February, 1984.

5. In this revisional jurisdiction, where it is to be seen that whether conclusions arrived at by the courts below are according to law or not. As stated above, in civil cases, strict proof is not required and evidence is required to be appreciated on preponderance of probabilities or totality of the evidence. Evidence of both the Doctors and the documents produced by them were taken by the Appellate Bench of the Small Causes Court in careful consideration, and approach which Appellate Bench adopted in appreciation of this evidence was undoubtedly

judicial approach, and in these circumstances, it cannot be said that the conclusion arrived at by the Appellate Bench of the Small Causes Court was contrary to the law or was not according to law. There are certain contentions raised on behalf of the petitioner that proper facts have not been pleaded in the written statement. The written statement has been filed on 8th of February, 1985. The fact that the certificate of Dr. Baramatiwala which was obtained on 25th June, 1984 i.e. the date before filing of the suit. No explanation was offered by the defendant that on that particular date what was the requirement of defendant to obtain that particular certificate. Dr. Baramatiwala was of the same caste of which the defendant belongs to. Defendant has admitted that he travelled from Amravati to Jamnagar in September, 1983 i.e. in train about 1000 kilometer and according to learned Advocate Mr. Ashish Shah, these are the circumstances, which ought to have been taken care of by the Appellate Bench. The Appellate Bench has considered and appreciated this substantial evidence on record, which according to the Appellate Bench, leads to the conclusion that the defendant was so sick and was unable to do the business in the rented premises for a continuous period of six months immediately preceding the date of filing of the suit and since this conclusion of the Appellate Bench of the Small Causes Court is no way found illegal or contrary to law and since the Appellate Bench has considered the totality of evidence, no interference is called for on the grounds contended by

Mr. Shah as mentioned above. Therefore, above mentioned contentions cannot be upheld for doubting the evidence of the defendant so as to appreciate the same as the defendant had not taken the treatment or he was not sick.

6. In this view of the matter, this Revision fails and the same is dismissed. Rule is discharged with no order as to costs.

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p.n.nair